



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0099]

Hours of Service of Drivers: Application for Exemption; Leland Schmitt, Jr.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the application from Leland Schmitt, Jr., requesting an exemption from five provisions of the federal hours of service (HOS) regulations. The applicant requests the exemption for a five-year period and believes that his safe driving record and experience demonstrate an equivalent level of safety. FMCSA analyzed the application and public comments and determined that the exemption would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number “FMCSA-2022-0099” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2022-0099” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

To reduce the possibility of driver fatigue, FMCSA's hours of service (HOS) regulations in 49 CFR part 395 place limits on the amount of time drivers of commercial motor vehicles (CMVs) may drive. The HOS regulations in 49 CFR 395.3(a)(1) prohibit an individuals from driving again after 11 hours driving or 14 hours on duty until they have been off duty for a minimum of 10 consecutive hours, or the equivalent of at least 10 consecutive hours off duty. Under 49 CFR 395.3(a)(2)—commonly referred to as the 14-hour “driving window”—a driver has 14 consecutive hours in which to drive up to 11 hours after being off duty for 10 or more consecutive hours. Section 395.3(a)(3)(ii) mandates that drivers take a 30-minute break when they have driven for a period of 8 cumulative hours without at least a 30-minute interruption. The break may be satisfied by any non-driving period of 30 consecutive minutes (i.e., on-duty not driving, off duty, sleeper berth, or any combination of these taken consecutively). Section 395.3(b)(1) prohibits drivers for a motor carrier that does not operate CMVs every day of the week from driving a CMV after being on duty for 60 hours during any 7 consecutive days, and section 395.3(b)(2) prohibits drivers for a motor carrier that operates CMVs every day of the week from driving a CMV after being on duty for 70 hours in any 8 consecutive days.

Applicant's Request

Leland Schmitt, Jr., requests a five-year exemption from 49 CFR 395.3(a)(1), section 395.3(a)(2), section 395.3(a)(3)(ii), and sections 395.3(b)(1) and (2). The applicant is an owner-operator currently leased to D & E Transport in Clearwater, Minnesota, who has been driving CMVs for 30 years. The requested exemption is solely for Mr. Schmitt. The applicant states that the mandatory 10 hour off-duty break goes against his natural sleep patterns, as his normal nighttime sleep while in the CMV is between 5 and 7 hours.

IV. Method to Ensure an Equivalent or Greater Level of Safety

The applicant believes that his level of safety under this exemption would be better than he could achieve by complying with the HOS regulations because he will receive the proper rest needed when he needs it. He points to his excellent driving record and 30 years of safe driving experience. He states that he has not been involved in any crashes and that he has accumulated over three million safe driving miles during his truck driving career. He further indicates that he is not requesting an exemption from the required 11 hours of total driving time, which will be properly recorded by the electronic logging device (ELD) in the vehicle. In his application for exemption, he also cites a sleep study by the Massachusetts Institute of Technology, which he states finds “no impact from more night sleep, though naps help.”

V. Public Comments

On June 9, 2022, FMCSA published Mr. Schmitt’s application and requested public comment [87 FR 35282]. The Agency received 651 total comments, 647 of which were filed by individual commenters; 350 comments supported the exemption, 68 were opposed, and 229 offered no position either for or against the request. Advocates for Highway and Auto Safety (Advocates) filed comments strongly opposing the request. Advocates stated: “Exempting the Petitioner (or any CMV operator) from these HOS provisions and allowing him to drive as long, frequently and as much as he desires would be utterly reckless and presents a needless threat to public safety regardless of his past driving record. Granting the application would also disregard well established science on driver fatigue.”

Other themes included among the comments were that: (1) safe drivers are leaving the trucking industry because they are “over-regulated;” (2) there are problems relating to loading/unloading delays at shipper and driver detention times; (3) the applicant should use the current sleeper-berth “split” provisions (7/3 “split”); (4) with over three million CMV drivers in the industry, the Agency cannot exempt one individual

driver from the HOS rules; (5) numerous commenters would like to be included in the exemption if it is granted, and others said that they would be applying for a similar exemption; (6) the HOS regulations and the mandatory use of ELDs are objectionable; (7) if the exemption is granted, it should apply to all CMV drivers; and (8) the Agency should do a pilot study on the exemption the applicant requests.

VI. FMCSA Safety Analysis and Decision

FMCSA evaluated Mr. Schmitt's application and public comments and denies the exemption request. Mr. Schmitt failed to establish that he would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. The Agency established and enforces the HOS regulations to keep fatigued drivers off the public roadways. Research studies demonstrate that long work hours reduce sleep and harm driver health and that crash risk increases with work hours. The HOS regulations impose limits on when and how long an individual may drive, to ensure that drivers stay awake and alert, and to reduce the possibility of cumulative fatigue. The Agency concurs with commenters that if it exempts one individual from the HOS regulations, it could open the door for a huge number of similar exemption requests. Such a result would be inconsistent with a primary goal of the HOS regulations.

For the above reasons, Leland Schmitt, Jr.'s exemption application is denied.

Robin Hutcheson,

Administrator.

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